



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 05-06

SUBJECT: THERESA MALONE
FORMER MEMBER
NEVADA STATE BOARD OF EDUCATION

A. JURISDICTION:

At the time of the alleged conduct which is the subject of this complaint, Theresa Malone was an elected member of the Nevada State Board of Education and, thus, was a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over this complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 05-06 (Tab B)
- Reviewed subject's response dated April 21, 2005 (Tab C)
- Reviewed agendas and minutes of Nevada State Board of Education meetings for June 18, 2004; June 19, 2004; July 9, 2004; August 13, 2004; and August 14, 2004
- Reviewed agendas and minutes from the meetings of the Nevada State Board of Education Subcommittee on Charter Schools for June 18, 2004 and July 9, 2004
- Reviewed newspaper articles regarding Clark County Team Academy and Team A Academy
- Reviewed agenda and minutes of Clark County Team Academy for April 6, 2004
- Conducted interviews of Ricci Rodriguez-Elkins, charter school advocate, and Judy Kroshus, Administrator, Team A Academy

C. RECOMMENDATIONS:

Based on investigative activities, the Executive Director recommends the Panel find just and sufficient cause **DOES NOT EXIST** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(1); and
- NRS 281.481(2).

SPECIFIC REASONS:

No allegations or credible evidence of any fact exists that amounts to or supports a potential violation by any public officer of the above provisions of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges violations of NRS 281.481(1) and NRS 281.481(2) by Theresa Malone, who at the time of the alleged conduct served as a member of the Nevada State Board of Education (hereinafter the “State Board”). The complaint alleges Ms. Malone violated the Ethics in Government Law by:

1. Seeking and receiving support (in the form of a website endorsement) for her campaign for the Nevada State Senate in exchange for her vote regarding the State Board’s sponsorship of the conversion of the Team A Academy (hereinafter “Washoe charter”) from a subsection 4 charter status to a full charter status;
2. Having private discussions regarding the Washoe charter school conversion with Washoe administrator Judy Kroshus;
3. Withholding fiscal information from the Nevada State Board of Education relating to the charter conversion in exchange for compensation or employment from Judy Kroshus; and
4. Causing the Clark County Team Academy (hereinafter “Clark charter”) to close due to her actions that prevented Clark charter from collecting public monies, and by withholding relevant fiscal information with regard to the Washoe charter.

E. SUMMARY OF SUBJECT’S RESPONSE:

In her response, Ms. Malone denied the allegations set forth in the complaint, and responded:

- She received no campaign contributions from either Kroshus or advocate Rodriguez-Elkins;
- She did not ask either Kroshus or Rodriguez-Elkins for a website endorsement for her campaign, nor did she ever view such an alleged website;
- She did not cast her vote on the Washoe charter conversion exchange for support in her campaign;
- Any communications she may have had with Kroshus were simply to encourage Kroshus to contact the officials that deal with charter schools, and there was nothing illegal or inappropriate regarding her actions;
- She never withheld fiscal information regarding the Washoe charter from the State Board;
- She only voted for those charter schools that had met the statutory requirements for same;
- She never sought or received employment from Kroshus or any other kindergarten through grade twelve educational institution during her tenure with the State Board; and
- She could in no way be solely responsible for the failure of the Clark charter school.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

1. A public officer or employee shall not seek or accept any gift, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties.
2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.¹

(b) “Unwarranted” means without justification or adequate reason.

¹ NRS 281.501 (8) states: “... As used in this section, “commitment in a private capacity to the interests of others” means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection.

G. RESULTS OF INVESTIGATION:

Factual History:

The requester of the complaint, Frank Mitchell, was the administrator for the Clark County Team Academy (Clark charter), an on-line high school chartered by the Clark County School District that opened in August, 2003 in Las Vegas. In December of 2004, Clark County School District revoked the Clark charter and the school closed. Initially, the Clark charter group also operated the Team A Academy in Reno (Washoe charter), and sought to continue this relationship by administering instruction on-line through the Las Vegas satellite school—Clark charter. However, the Washoe charter severed ties with the Clark charter and sought its own charter status.

The licensing procedure for a charter a school entails a local school district reviewing the charter school application for compliance with state laws and regulations and determining whether the district is interested in sponsoring the charter school. If the local school district declines to sponsor a charter school, the school may apply to the State Board of Education for its sponsorship. Since the Washoe County School District had issued a moratorium on approving any new charter schools, the Washoe charter applied for sponsorship with the State Board. Nevada law provides the State Board *shall* approve a charter application for sponsorship once the Department of Education staff has determined the application is complete and compliant. Pursuant to NRS 386.527, approval of the application by the State Board constitutes sponsorship by the State Board and authorizes a charter school to operate.

The complaint alleges Ms. Malone, while serving on the State Board:

- 1) sought and received support (in the form of a website endorsement) for her election campaign for the Nevada State Senate in exchange for her vote for State Board sponsorship of the Washoe charter;
- 2) had private discussions regarding the Washoe charter application with Washoe charter administrator Judy Kroshus;
- 3) withheld fiscal information from the State Board relating to the Washoe charter application in exchange for compensation or employment from Judy Kroshus; and
- 4) caused the Clark charter to close by acting to prevent Clark charter from collecting public monies and by withholding fiscal information with regard to the Washoe charter.

Allegation that Malone sought and received support for her campaign in exchange for her vote for State Board sponsorship of the Washoe charter in potential violation of NRS 281.481(1) and NRS 281.481(2).

For a potential violation of NRS 281.481(1), credible evidence must exist to demonstrate how the public officer sought or accepted a gift, favor, employment, engagement, emolument or economic opportunity. Credible evidence must also exist to support how the seeking of or acceptance of such a gift, etc., would tend *improperly to influence* a

reasonable person in his position to depart from the faithful and impartial discharge of his public duties.

In *NCOE Opinion 04-34*, the Commission found an ethical violation where a member of the State Board of Education participated in a charter school application process at the State Board level while concurrently receiving compensation for both his and his wife's employment with the same charter school. In that request for opinion the subject, John Hawk, was an elected member of the State Board of Education as well as a member of the State Board's Subcommittee on Charter Schools and an applicant for state sponsorship of a charter school. The Commission opined Hawk had a significant pecuniary interest that created an impermissible conflict avoidable only by Hawk resigning from the Board, which he did not do until after the school's charter was approved.

The circumstances surrounding this request for opinion are distinguishable from those in the *Hawk* case. There, both Hawk and his wife were receiving salaries as co-administrators for the charter school and advocating for the State Board approval and sponsorship of the school while, at the same time, Hawk was serving on the State Board. Unlike the *Hawk* case, Malone was not employed by, nor did she have a pecuniary interest in, the Washoe charter. In this complaint, requester claims that Malone accepted support for her campaign for the Nevada State Senate in the form of an endorsement on a website in exchange for her support on a school charter application pending before the State Board. Malone claims to have never seen such a web site, and staff found no evidence of such a web site. Rather, the investigation revealed that Ricci Rodriguez-Elkins, an advocate for charter schools and an acquaintance of Judy Kroshus, had a tagline on her standard e-mail signature that stated "elect Barbara Myers and Theresa Malone." Ms. Elkins maintained this signature tagline on both her private and business e-mail. She removed the tag line from her business e-mail after one week of use. The tag line on her e-mail would have been visible to everyone whom she e-mailed. Malone claims she was not aware of this support for her candidacy, nor did she request such support. No evidence exists to substantiate Malone "sought or accepted any gift, service, favor, employment, engagement, emolument" in the form of this support for her campaign in exchange for her support on the Washoe charter application.

In order for a violation of NRS 281.481(2) to be sustained, the evidence must establish both that the public officer: (1) *used* his position in government; and (2) that he secured unwarranted privileges, preferences, exemptions, or advantages through this *use*. The evidence does not establish any such overt use in this case.

NRS 281.481(2) states:

"A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

- (a) “Commitment in a private capacity to the interests of that person” has the meaning ascribed to “commitment in a private capacity to the interests of others” in subsection 8 of NRS 281.501.
- (b) “Unwarranted” means without justification or adequate reason.”

No evidence was provided with the complaint or uncovered during the course of the investigation to support the allegation that Malone used her position to either secure or grant an advantage for herself or any business in which she has a significant pecuniary interest. Nor is there any evidence demonstrating Malone used her position to benefit any person to whom she has a commitment in a private capacity. Both Malone and Kroshus deny the allegation that support was given to Malone’s campaign in exchange for support for the Washoe charter conversion. There is no evidence which contradicts this assertion.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.481(1) or NRS 281.481(2) with regard to this allegation. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Ms. Malone violated the provisions of NRS 281.481(1) and NRS 281.481(2).

Allegation that Malone had private discussions regarding the Washoe charter school conversion with Washoe charter administrator Judy Kroshus in order to secure Malone’s vote in potential violation of NRS 281.481(1) and NRS 281.481(2).

No evidence was provided in the complaint or found in the course of the investigation to support the alleged occurrence of private discussions between Malone and Kroshus regarding the Washoe charter conversion. Malone asserts that any time she was approached by Kroshus she simply encouraged Kroshus to contact the appropriate officials that deal with charter schools, and there was nothing illegal or inappropriate about her actions in this regard. The two did not have ‘private’ discussions about the Washoe charter conversion. Absent evidence of such private discussions, no credible evidence exists to substantiate Malone sought or accepted a favor which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties, nor that she used her position in government to secure or grant unwarranted privileges, preferences, or advantages for herself or others.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.481(1) or NRS 281.481(2) with regard to this allegation. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Ms. Malone violated the provisions of NRS 281.481(1) and NRS 281.481(2).

Allegation that Malone withheld fiscal information from the State Board relating to the Washoe charter application in exchange for compensation or employment from Judy Kroshus in potential violation of NRS 281.481(1) and NRS 281.481(2).

The complaint alleges Malone withheld fiscal information regarding the Washoe and Clark charters from the State Board in exchange for compensation or employment from Washoe charter administrator Judy Kroshus; however, no evidence or documentation is provided to substantiate this allegation. There is no evidence that Malone had any financial or fiscal information that was any different than any other member of the State Board. Absent such evidence, it is illogical to presume she could have withheld fiscal information from the State Board as alleged in the complaint. Further, there is no evidence within the record that Malone actually sought or accepted compensation or employment from Kroshus. Both Malone and Kroshus deny this allegation. Malone further claims she did not seek or accept employment from Kroshus or any other kindergarten through grade twelve educational institution during her tenure on the State Board. The complaint offers no evidence in support of this allegation.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.481(1) or NRS 281.481(2) with regard to this allegation. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Ms. Malone violated the provisions of NRS 281.481(1) and NRS 281.481(2).

Allegations that Malone caused the Clark charter to close by acting to prevent Clark charter from collecting public monies and withholding fiscal information with regard to the Washoe charter in potential violation of NRS 281.481(1) and NRS 281.481(2).

The complaint alleges Malone acted to prevent Clark charter from collecting public monies and withheld fiscal information from the rest of the State Board with regard to the Washoe charter. The complaint further alleges that this withholding of fiscal information caused the Clark charter to close while the Washoe charter remained open; however, documents provided with the complaint do not support this conclusion. In fact, the July 9, 2004 minutes of the Nevada State Board of Education reflect the State Board's concern about the Washoe charter's outstanding debts and the subsequent denial of Washoe charter's request for full charter status.

The complaint provides no credible evidence to demonstrate how Malone acted to prevent Clark charter from collecting public monies or how these monies might play a role in the issues raised within this complaint. Further, no evidence is presented to demonstrate how Malone withheld fiscal information regarding the Washoe charter (or the Clark charter) or what that fiscal information might have been, nor how Malone's alleged conduct caused the Clark charter to close its doors. Finally, no evidence is provided as to how the alleged activities or chain of events set forth within the complaint constitute Malone benefiting in any way which would tend improperly to influence a reasonable person in her position to depart from the faithful and impartial discharge of her public duties, or that would result in the conclusion that she used her position in

government to secure or grant unwarranted privileges, preferences, or advantages for herself or others.

Therefore, the Executive Director recommends no credible evidence exists to substantiate a potential violation of NRS 281.481(1) or NRS 281.481(2) with regard to this allegation. Accordingly, the Executive Director recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion regarding whether Ms. Malone violated the provisions of NRS 281.481(1) and NRS 281.481(2).

H. CONCLUSION:

The Executive Director hereby recommends the panel find just and sufficient cause does not exist for the Commission to hold a hearing and render an opinion on the allegations that the subject violated NRS 281.481(1) and NRS 281.481(2), and further that the allegations be dismissed.

DATED: September 19, 2005

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR